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NUCLEAR SECURITY ACT OF 2005

JULY 1, 2005.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 864]

The Committee on Environment and Public Works, to which was referred a bill (S. 864) to amend the Atomic Energy Act of 1954 to modify provisions relating to nuclear safety and security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

The Atomic Energy Act of 1954 assigned to the Atomic Energy Commission responsibility for protecting public health and safety from the hazards of radiation produced through nuclear technology. The Energy Reorganization Act of 1974 abolished the Atomic Energy Commission and created a new agency, the Nuclear Regulatory Commission (NRC or Commission), to take over its regulatory functions.

The Senate Committee on Environment and Public Works has jurisdiction over the nonmilitary environmental regulation and control of atomic energy. This includes both legislative and oversight authority pertaining to the operations of the NRC.

Among the responsibilities entrusted to the Nuclear Regulatory Commission are regulation of the nation's commercial nuclear power plants, along with most other civilian uses of radioactive materials. The mission of the NRC is to conduct an effective regulatory program that promotes the safe use of nuclear energy and

materials, in a manner that protects the public health and safety and the human environment, and promotes the common defense and security.

As stated in the Atomic Energy Act:

‘ . . . the development, use and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security . . . ’

There are 103 commercial nuclear power reactors licensed to operate by the NRC in 31 States. Additionally, NRC has regulatory responsibility over seven fuel fabrication and production facilities; two gaseous diffusion uranium enrichment facilities; and 14 other facilities that possess significant quantities of special nuclear material (other than reactors) or process source material (other than uranium enrichment facilities). The NRC also administers approximately 5,000 licenses for medical, academic and industrial uses of nuclear materials; and has agreements under which States will administer approximately 16,000 additional such licenses.

Following the events of September 11th, the NRC took immediate action to respond to heightened threat levels and concerns. It undertook intensive consultation with other Federal entities, including the Federal Bureau of Investigation, the Office of Homeland Security (and subsequently the Department of Homeland Security), the Department of Defense, the Federal Aviation Administration and others to evaluate general and specific threats to NRC licensed facilities, and to coordinate planning and responsive actions. The NRC has consulted with Governors regarding the deployment of State assets, including the National Guard. Since that time, the NRC has issued a series of Orders directing licensees to enhance security at nuclear facilities (see below).

- Required licensees to conduct vehicle checks at greater stand-off distances (February 2002)
- Required more security officers, patrols, and checkpoints (February 2002)
- Improved coordination with law enforcement and intelligence communities (February 2002)
- Required capability to respond to large explosions or fires (February 2002)
- Enhanced site access controls for personnel (January 2003)
- Required additional physical barriers (February 2002 and April 2003)
- Strengthened training and qualification programs for security force personnel (April 2003)
- Modified work hour limits for security personnel and updated procedures for evaluating security force fatigue (April 2003)
- Increased physical security to defend against a more challenging terrorist threat supplemented the Design Basis Threat (April 2003)
- Enhanced security for spent fuel storage (May and October 2002)

The Commission has also issued security orders for decommissioning power reactors, fuel cycle facilities, spent fuel facilities, possession and shipment of spent fuel, and for irradiators possessing byproduct material in sealed sources.

The committee has worked closely with the NRC to monitor changing circumstances and to oversee activities of the NRC and its licensees.

OBJECTIVES OF THE LEGISLATION

The Nuclear Security Act of 2005 (s. 864), which was introduced by Senators Inhofe and Voinovich on April 20, 2005, is an important step in ensuring protection of the public against potential terrorist activities against commercial nuclear facilities or potential theft of nuclear materials. S. 864 is a continuation of the committee's efforts to address nuclear security issues. In every Congress since 1999, the committee has reported legislation that contained vital security authorities for the NRC. During the 108th Congress, the committee unanimously reported S. 1043, the Nuclear Infrastructure Security Act. This legislation would have authorized a comprehensive assessment of potential security threats and required the NRC to implement measures to address those threats. While S. 1043 bill did not become law, the committee strongly commends the NRC for acting to implement virtually all of the provisions of the bill that could be done administratively. S. 864 recognizes the administrative actions taken by the NRC and seeks to fill in the remaining gaps in authority that prevent the NRC from taking further action. This bill also takes additional steps to protect against theft or terrorist use of radioactive materials in so-called 'dirty bombs.'

The committee has taken extensive testimony, both classified and unclassified, on the issues involved in securing the nation's nuclear facilities. In developing this legislation, the committee has worked with industry, public interest groups, private security guards employed at nuclear facilities, and members of the public. This legislation represents a carefully considered, bipartisan response to the threat that U.S. nuclear resources would be employed as weapons of destruction.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title; table of contents.

This Act may be cited as the "Nuclear Security Act of 2005".

Sec. 2. Definition of Commission.

The term "Commission" means the Nuclear Regulatory Commission.

TITLE I—NUCLEAR SAFETY AND SECURITY

Sec. 101. General provisions.

Each previously specified authority of the Commission under Section 161 of the Atomic Energy Act (42 U.S.C. 2201) would be prefaced by the phrase "*In carrying out the duties of the Commission, the Commission may*".

Sec. 102. Use of firearms by security personnel.

This section adds a new subsection 161A(a) to the Atomic Energy Act of 1954 to define the types of firearms that may be used by security personnel at a nuclear facility. Such firearms include: a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machine gun, a semiautomatic assault weapon, and associated ammunition and ammunition feeding devices.

A new subsection 161A(b) authorizes security personnel of licensees and certificate holders of the Nuclear Regulatory Commission (including employees of contractors of licensees and certificate holders) to transfer, receive, possess, transport, import, and use 1 or more of those weapons, ammunition, or devices defined in the previous section to effectively protect facilities, equipment, and radioactive materials. The committee expects this authority to be exercised primarily on the premises of a licensee or certificate holder, or in the transport of radioactive material. The committee anticipates the Commission will be judicious in exercising its authority to allow the use of armed personnel in other venues, and suggests this authority not be delegated to licensees or certificate holders without prior approval by the Commission.

The authority provide in this section is notwithstanding sections 922(a)(4), 922(a)(5), 922(b)(2), 922(b)(4), 922(o), and 925(d)(3) of title 18, United States Code, and section 5844 of title 26, United States Code, or any provision of any State law or any rule or regulation of a State or any political subdivision of a State prohibiting the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machine gun, a semiautomatic assault weapon and ammunition, or a large capacity ammunition feeding device.

A new subsection 161A(c) requires that security personnel receiving such firearms and ammunition are subject to a background check by the U.S. Attorney General. Such a background check is required to include fingerprinting and a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the individual is prohibited from possessing or receiving a firearm under Federal or State law.

Sec. 103. Fingerprinting and criminal history record checks.

Amends section 149(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) to require that the Nuclear Regulatory Commission fingerprint each individual with unescorted access to a utilization facility; or radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that the Nuclear Regulatory Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or is permitted access to safeguards information under section 147.

Fingerprints obtained would be submitted to the U.S. Attorney General, through the Commission, for identification and criminal history records checks. The Attorney General may provide the results of any search to the Commission. As is also the case under current law, the Commission would be authorized to provide the results of the identification and criminal history records checks (other

than information that a Government agency has determined should not be made available to a licensee, certificate holder, or applicant) to the person who conducted the fingerprinting. A decision would then be made whether to provide unescorted access, or access to safeguards information, to the individual who was the subject of the background check.

Sec. 104. Security evaluations; design basis threat rulemaking.

A new section 170C would be added to the Atomic Energy Act of 1954 that would require the Nuclear Regulatory Commission conduct security evaluations at each licensed facility at least once every 3 years. The security evaluations must include force-on-force exercises that simulate security threats, to the maximum extent possible, in accordance with the applicable design basis threat. Prior to September 11, 2001 similar security exercises were conducted approximately once every 6 years, but the NRC has recently instituted a 3-year schedule—this section codifies the 3 year requirement. The NRC is required to mitigate any potential conflict of interest that could influence the results of the force-on-force exercises. This section also requires the NRC to ensure that the licensee corrects any deficiencies identified by the NRC during the security response evaluations. The NRC is also required to submit a report at least once per year to the Senate Environment and Public Works Committee and House Energy and Commerce Committee detailing the results of the security evaluations conducted (and any corrective actions taken) during the previous year.

A new section 170D is also added to the Atomic Energy Act of 1954 to require the NRC to initiate a rulemaking to revise the design basis threat within 90 days of enactment, and any newly initiated rulemaking must be completed 18 months after that date. In the event that the Commission is engaged in such a rulemaking at the time of enactment, the NRC must complete any ongoing rulemaking to revise the design basis threat not later than 18 months after the date of enactment of this section. While the NRC has issued numerous orders to licensees to upgrade security, it has yet to initiate a rulemaking to put these upgrades into regulation. The NRC has stated that it intends to initiate such a rulemaking this summer. This section would require such a rulemaking if it has not already been initiated prior to enactment.

Sec. 105. Unauthorized introduction of dangerous weapons.

This section expands subsection 229(a) of the Atomic Energy Act to include facilities, installations or real property subject to the licensing or certification authority of the Commission. This would allow Commission to apply the provisions of section 229(a) to NRC licensed or certified activities, thereby allowing the Commission to prohibit a person who has not obtained prior authorization from carrying, transporting, or otherwise introducing or causing to be introduced any weapon, explosive, or other dangerous instrumentality into any facility, installation or real property regulated or subject to certification by the Commission. The committee notes that the term “dangerous weapons” is left undefined by section 229 because it is necessary to allow security forces a reasonable degree of latitude and flexibility to determine levels of threat. The com-

mittee expects the clarifying language “likely to produce substantial injury or damage to persons or property” will be applied judiciously, and encourages the Commission to consider addressing this point in regulations.

Sec. 106. Sabotage of nuclear facilities, fuel, or designated material.

This section amends section 236(a) of the Atomic Energy Act of 1954 to expand existing Federal criminal sanctions to include sabotage or attempted sabotage of any production, utilization waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, nuclear fuel fabrication, or primary or critical backup facilities as well as sabotage or attempted sabotage during the construction stage of those facilities, if the damage could affect public health and safety during facility operation.

Sec. 107. Whistleblower protection.

This section amends section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) by extending the whistleblower protection to include the Nuclear Regulatory Commission employees, contractors, and subcontractors.

Section 211(b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)) is also amended by ensuring that protected employees who filed whistleblower discrimination complaints with the Secretary of Labor could file Federal lawsuits if the Secretary had not issued a final decision within 1 year.

Sec. 108. Office of Nuclear Security and Incident Response.

This section amends Title II of the Energy Reorganization Act of 1974 by adding a new section 212, which establishes an Office of Nuclear Security and Incident Response. This new section is intended to codify action taken by the Commission in April, 2002, that created such an office by administrative action. The committee intends this provision to provide this office the equivalent statutory status as other Commission offices. New subsections 212(a) and 212(b) establish the Office of Nuclear Security and Incident Response and provides for the appointment of a Director to head the office, and specifies the duties of the Director.

Sec. 109. Spent fuel rods and segments.

The Nuclear Regulatory Commission is required to develop uniform guidelines for a materials control and accountability program for spent fuel rods no later than 260 days after the date of enactment.

TITLE II—DIRTY BOMB PREVENTION

Sec. 201. Radiation source protection.

This section amends Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) to add a new section 170E at the end. New subsection 170E(a) defines the terms ‘radiation source’. Subsection 170E(b) requires the Nuclear Regulatory Commission to issue regulations to control the international import and export of radiation sources in accordance with the International Atomic Energy Agency’s (IAEA) Code of Conduct for Category 1 and 2

sources. Subsection 170E(c) requires the Nuclear Regulatory Commission to issue regulations to develop a domestic tracking system for discrete radiation sources and any other radioactive material that the NRC determines warrants protection in the United States. Subsection 170E(d) requires the Nuclear Regulatory Commission to impose a civil penalty not to exceed \$1,000,000 for violating subsection 170E(a) and subsection 170E(b). Subsection 170E(e) requires that the Nuclear Regulatory Commission enter into an arrangement with the National Academy of Sciences to study the industrial, research, and commercial uses for radiation sources. Subsection 170E(f) establishes a task force consisting of several Federal agencies in consultation with State and local agencies responsible for evaluating, and providing recommendations relating to, the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device. Subsection 170E(g) requires that the Nuclear Regulatory Commission take the necessary actions to address recommendations of the task force established in subsection 170E(f).

Sec. 202. Treatment of accelerator-produced and other radioactive material as byproduct material.

This section extends current Nuclear Regulatory Commission regulatory authority under Section 11(e) of the Atomic Energy Act with respect to specifically defined radioactive materials, to include discrete sources of radium-226, certain hazardous discrete sources of naturally occurring radioactive material (NORM), or accelerator-produced radioactive material that are produced, extracted, or converted for use in commercial, medical, or research activities. The Nuclear Regulatory Commission broaden definition also is applied to existing agreements between States and the Nuclear Regulatory Commission and waste disposal requirements. The Nuclear Regulatory Commission is required after consultation with States and other stakeholders to issue final regulations within 1 year establishing requirements for this section.

LEGISLATIVE HISTORY

On April 20, 2005, Senator Inhofe introduced S. 864, which was referred to the Committee on Environment and Public Works. On June 8, 2005, the committee ordered S. 864 to be reported favorably with an amendment in the nature of a substitute.

HEARINGS

During the 109th Congress, the Committee on Environment and Public Works held two hearings where security issues were discussed. On May 17, 2005, the committee held a classified (Top Secret) hearing on nuclear security receiving testimony from the Nuclear Regulatory Commission. The committee held a Nuclear Regulatory Commission oversight hearing on May 26, 2005, receiving testimony from the Nuclear Regulatory Commission; the Government Accountability Office; Marilyn C. Kray of NuStart; and Dr. Edwin Lyman representing the Union of Concerned Scientists.

No hearings were held in the 108th Congress on this bill. During the 107th Congress, the Committee on Environment and Public Works held a hearing on infrastructure security on November 1, 2001, receiving testimony from Hon. Michael Brown, Deputy Director, Federal Emergency Management Agency; Hon. Joe Moravec, Commissioner, Public Building Service, General Services Administration; Dr. David Sampson, Assistant Secretary for Economic Development, Economic Development Administration, U.S. Department of Commerce; Dr. Richard Meserve, Chairman, Nuclear Regulatory Commission; Herbert Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration; and Marianne L. Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency.

On June 20, 2002, the Committee on Environment and Public Works held a classified hearing on nuclear security, receiving testimony from Federal Government witnesses. On June 5, 2002, the Committee on Environment and Public Works held a hearing to receive testimony on S. 1586, a bill to amend the Atomic Energy Act of 1954 to authorize the carrying of firearms by employees of licensees, and for other purposes, and S. 1746, a bill to amend the Atomic Energy Act of 1954 to strengthen security at sensitive nuclear facilities. At this hearing the committee received testimony from: Hon. Edward J. Markey, U.S. Representative from Massachusetts; Hon. Richard A. Meserve, Chairman, Nuclear Regulatory Commission; David Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Washington, DC; Jack Skolds, Chief Nuclear Officer, Excelsior Corp., Washington, DC; Danielle Brian, Executive Director, Project on Government Oversight, Washington, DC; Donna J. Hastie, Emergency Planning Consultant, Marietta, GA; and Irwin Redlener, M.D., F.A.A.P., President, Children's Health Fund, New York, NY.

ROLLCALL VOTES

On June 8, 2005, the Committee on Environment and Public Works met to consider S. 864. A managers' amendment to the bill was offered by the chairman and agreed to by voice vote. Final passage of the measure and a motion to report the bill to the Senate as amended was agreed to by voice vote.

REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 864 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 864 would require fees to be paid to the to the Nuclear Regulatory Commission to cover increased costs for security at nuclear facilities. The committee does not believe that these costs will exceed the annual threshold for intergovernmental or private-sector mandates, as provided by UMRA.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires each report to contain a statement of the cost of a reported bill prepared by the Congressional Budget Office. Senate Rule XXVI paragraph 11(a)(3) allows the report to include a statement of the reasons why compliance is impracticable. The committee has requested this statement from the Congressional Budget Office and will publish it in the Congressional Record when it becomes available.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

ATOMIC ENERGY ACT OF 1954

TABLE OF CONTENTS

TITLE I—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

* * * * *

CHAPTER 14. GENERAL AUTHORITY

Sec. 161. General provisions.
 Sec. 162. Contracts.
 Sec. 163. Advisory Committees.
 Sec. 164. Electric Utility Contracts.
 Sec. 165. Contract Practices.
 Sec. 166. Comptroller General Audit.
 Sec. 167. Claim Settlements.
 Sec. 168. Payments in Lieu of Taxes.
 Sec. 169. No Subsidy.
 Sec. 170. Indemnification and Limitation of Liability.
 Sec. 170A. Conflicts of interest relating to contracts and other arrangements.
Sec. 170B. Uranium supply.
Sec. 170C. Security evaluations.
Sec. 170D. Design basis threat rulemaking.
Sec. 170E. Radiation source protection.

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CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

SECTION 1. DECLARATION.—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. * * *

* * * * *

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. * * *

* * * * *

e. The term “byproduct material” [means (1) any radioactive] means—

(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear [material, and (2) the tailings] material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material [content.] content;

(3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; or

(B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; and

(4) any discrete source of naturally occurring radioactive material, other than source material, that—

(A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after the date of enactment of this paragraph is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

SEC. 81. DOMESTIC DISTRIBUTION.—[No person may]

a. *IN GENERAL.*—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to appli-

cants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

b. REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), byproduct material, as defined in paragraphs (3) and (4) of section 11 e., may only be transferred to and disposed of in a disposal facility that—

(A) is adequate to protect public health and safety; and

(B)(i) is licensed by the Commission; or

(ii) is licensed by a State that has entered into an agreement with the Commission under section 274 b., if the licensing requirements of the State are compatible with the licensing requirements of the Commission.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection affects the authority of any entity to dispose of byproduct material, as defined in paragraphs (3) and (4) of section 11 e., at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

c. TREATMENT AS LOW-LEVEL RADIOACTIVE WASTE.—Byproduct material, as defined in paragraphs (3) and (4) of section 11 e., disposed of under this section shall not be considered to be low-level radioactive waste for the purposes of—

(1) section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b); or

(2) carrying out a compact that is—

(A) entered into in accordance with that Act (42 U.S.C. 2021b et seq.); and

(B) approved by Congress.

* * * * *

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

[a. The Nuclear Regulatory Commission (in this section referred to as the “Commission”) shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147.**]**

a.(1)(A)(i) The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).

(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)—

(I) are licensed or certified to engage in an activity subject to regulation by the Commission;

(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

(III) have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

(B) The Commission shall require to be fingerprinted any individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

(ii) is permitted access to safeguards information under section 147.

【All fingerprints obtained by a licensee or applicant as required in the preceding sentence】

(2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. 【The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant.】

(3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A). 【Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.】

(4) Notwithstanding any other provision of law—

(A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and

(B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent

with its obligations to promote the common defense and security and to protect the health and safety of the public.

c. For purposes of administering this section, the Commission shall prescribe~~], subject to public notice and comment, regulations—~~ *requirements—*

(1) to implement procedures for the taking of fingerprints;
(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the dissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted ~~unescorted access to the facility of a licensee or applicant~~ *unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)* or shall be permitted access to safeguards information under section 147;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. *The Commission may require a person or individual to conduct fingerprinting under subsection a.(1) by authorizing or requiring the use of any alternative biometric method for identification that has been approved by—*

(1) the Attorney General; and

(2) the Commission, by regulation.

[d.] (e) (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

* * * * *

[SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—]

SEC. 161. GENERAL PROVISIONS.

a. *In carrying out the duties of the Commission, the Commission may* establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board[;].

b. *In carrying out the duties of the Commission, the Commission may* establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235[;].

c. *In carrying out the duties of the Commission, the Commission may* make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States[;].

d. *In carrying out the duties of the Commission, the Commission may* appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended) whose position would be subject to the Classification Act of 1949, as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provision for ad-

ministrative review of any determination to dismiss any employee[;].

e. *In carrying out the duties of the Commission, the Commission may* acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases, and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community[;].

f. *In carrying out the duties of the Commission, the Commission may* with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable[;].

g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;

h. *In carrying out the duties of the Commission, the Commission may* consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission[;].

i. *In carrying out the duties of the Commission, the Commission may* prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of

the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

j. *In carrying out the duties of the Commission, the Commission may without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: Provided, however, That the property furnished to licensees in accordance with the provisions of subsection 161 m. shall not be deemed to be property disposed of by the Commission pursuant to this subsection[;].*

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

[l. Repealed by Pub. L. 87-456, § 303(c), 76 Stat. 78, May 24, 1962.]

m. *In carrying out the duties of the Commission, the Commission may enter into agreements with persons licensed under Section 103, 104, 53 a. (4), or 63 a. (4) for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: Provided, however, That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: And provided further, That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission[;]*.

n. *In carrying out the duties of the Commission, the Commission may delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.[;]*.

o. *In carrying out the duties of the Commission, the Commission may require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105[; and]*.

p. *In carrying out the duties of the Commission, the Commission may make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.*

q. The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, an upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and

streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

r. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

s. *In carrying out the duties of the Commission, the Commission may* establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command[;].

t. *In carrying out the duties of the Commission, the Commission may* enter into contracts for the processing, fabricating, separating,

or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161 m.[];

u. [(1) enter into] *In carrying out the duties of the Commission, the Commission may—*

(1) *enter into* contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) *enter into* contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term “special facilities” as used in this subsection means any land, any depreciable buildings, structures, utilities, machinery, equipment,

and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

v. *In carrying out the duties of the Commission, the Commission may provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992 in performing such services*;

w. *In carrying out the duties of the Commission, the Commission may prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., or which operates any facility regulated or certified under section 1701 or 1702, any fee, charge, or price which it may require, in accordance with the provisions of section 483a of title 31 of the United States Code or any other law, of applicants for, or holders of, such licenses or certificates.*

x. **Establish** *In carrying out the duties of the Commission, the Commission may establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—*

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which

are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

SEC. 161A. USE OF FIREARMS BY SECURITY PERSONNEL.

a. DEFINITIONS.—In this section, the terms ‘handgun’, ‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machinegun’, ‘short-barreled shotgun’, and ‘short-barreled rifle’ have the meanings given the terms in section 921(a) of title 18, United States Code.

b. AUTHORIZATION.—Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title 18, United States Code, section 925(d)(3) of title 18, United States Code, section 5844 of the Internal Revenue Code of 1986, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission, the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices, if the Commission determines that—

(1) the authorization is necessary to the discharge of the official duties of the security personnel; and

(2) the security personnel—

(A) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws relating to possession of firearms by a certain category of persons;

(B) have successfully completed any requirement under this section for training in the use of firearms and tactical maneuvers;

(C) are engaged in the protection of—

(i) a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission; or

(ii) radioactive material or other property owned or possessed by a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

(D) are discharging the official duties of the security personnel in transferring, receiving, possessing, transporting, or importing the weapons, ammunition, or devices.

c. BACKGROUND CHECKS.—A person that receives, possesses, transports, imports, or uses a weapon, ammunition, or a device

under subsection (b) shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

d. *EFFECTIVE DATE.*—This section takes effect on the date on which guidelines are issued by the Commission, with the approval of the Attorney General, to carry out this section.

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SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—

a. * * *

* * * * *

SEC. 170C. SECURITY EVALUATIONS.

a. *SECURITY RESPONSE EVALUATIONS.*—Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat.

b. *FORCE-ON-FORCE EXERCISES.*—(1) The security evaluations shall include force-on-force exercises.

(2) The force-on-force exercises shall, to the maximum extent practicable, simulate security threats in accordance with any design basis threat applicable to a facility.

(3) In conducting a security evaluation, the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.

c. *ACTION BY LICENSEES.*—The Commission shall ensure that an affected licensee corrects any defect in performance identified by the Commission in a security response evaluation.

d. *FACILITIES UNDER HEIGHTENED THREAT LEVELS.*—The Commission may suspend a security evaluation under this section if the Commission determines that the evaluation would compromise security at a nuclear facility under a heightened threat level.

e. *REPORT.*—Not less often than once each year, the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report, in classified form and unclassified form, that describes the results of each security response evaluation conducted and any relevant corrective action taken by a licensee during the previous year.

SEC. 170D. DESIGN BASIS THREAT RULEMAKING.

The Commission shall—

(1) not later than 90 days after the date of enactment of this section, initiate a rulemaking proceeding, to be completed not later than 18 months after that date, to revise the design basis threats of the Commission; or

(2) not later than 18 months after the date of enactment of this section, complete any ongoing rulemaking to revise the design basis threats.

SEC. 170E. RADIATION SOURCE PROTECTION.

a. DEFINITIONS.—*In this section:*

(1) **CODE OF CONDUCT.**—*The term ‘Code of Conduct’ means the code entitled the ‘Code of Conduct on the Safety and Security of Radioactive Sources’, approved by the Board of Governors of the International Atomic Energy Agency and dated September 8, 2003.*

(2) **RADIATION SOURCE.**—*The term ‘radiation source’ means—*

(A) *a Category 1 Source or a Category 2 Source, as defined in the Code of Conduct; and*

(B) *any other material that poses a threat such that the material is subject to this section, as determined by the Commission, by regulation.*

b. COMMISSION APPROVAL.—*Not later than 180 days after the date of enactment of this section, the Commission shall issue regulations prohibiting a person from—*

(1) *exporting a radiation source, unless the Commission has specifically determined under section 57 or 82, consistent with the Code of Conduct, with respect to the exportation, that—*

(A) *the recipient of the radiation source may receive and possess the radiation source under the laws and regulations of the country of the recipient;*

(B) *the recipient country has the appropriate technical and administrative capability, resources, and regulatory structure to ensure that the radiation source will be managed in a safe and secure manner; and*

(C) *before the date on which the radiation source is shipped—*

(i) *a notification has been provided to the recipient country; and*

(ii) *a notification has been received from the recipient country, as the Commission determines to be appropriate;*

(2) *importing a radiation source, unless the Commission has determined, with respect to the importation, that—*

(A) *the proposed recipient is authorized by law to receive the radiation source; and*

(B) *the shipment will be made in accordance with any applicable Federal or State law or regulation; and*

(3) *selling or otherwise transferring ownership of a radiation source, unless the Commission—*

(A) *has determined that the licensee has verified that the proposed recipient is authorized under law to receive the radiation source; and*

(B) *has required that the transfer shall be made in accordance with any applicable Federal or State law or regulation.*

(c) TRACKING SYSTEM.—(1)(A) *Not later than 1 year after the date of enactment of this section, the Commission shall issue regula-*

tions establishing a mandatory tracking system for radiation sources in the United States.

(B) In establishing the tracking system under subparagraph (A), the Commission shall coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources.

(2) The tracking system under paragraph (1) shall—

(A) enable the identification of each radiation source by serial number or other unique identifier;

(B) require reporting within 7 days of any change of ownership or geographic location of a radiation source;

(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and

(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

d. **PENALTY.**—A violation of a regulation issued under subsection a. or b. shall be punishable by a civil penalty not to exceed \$1,000,000.

e. **NATIONAL ACADEMY OF SCIENCES STUDY.**—(1) Not later than 60 days after the date of enactment of this section, the Commission shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study of industrial, research, and commercial uses for radiation sources.

(2) The study under paragraph (1) shall include a review of uses of radiation sources in existence on the date on which the study is conducted, including an identification of any industrial or other process that—

(A) uses a radiation source that could be replaced with an economically and technically equivalent (or improved) process that does not require the use of a radiation source; or

(B) may be used with a radiation source that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source.

(3) Not later than 2 years after the date of enactment of this section, the Commission shall submit to Congress the results of the study under paragraph (1).

f. **TASK FORCE ON RADIATION SOURCE PROTECTION AND SECURITY.**—(1) There is established a task force on radiation source protection and security (referred to in this section as the ‘task force’).

(2)(A) The chairperson of the task force shall be the Chairperson of the Commission (or a designee).

(B) The membership of the task force shall consist of the following:

(i) The Secretary of Homeland Security (or a designee).

(ii) The Secretary of Defense (or a designee).

(iii) The Secretary of Energy (or a designee).

(iv) The Secretary of Transportation (or a designee).

(v) The Attorney General (or a designee).

(vi) The Secretary of State (or a designee).

(vii) The Director of National Intelligence (or a designee).

(viii) *The Director of the Central Intelligence Agency (or a designee).*

(ix) *The Director of the Federal Emergency Management Agency (or a designee).*

(x) *The Director of the Federal Bureau of Investigation (or a designee).*

(3)(A) *The task force, in consultation with Federal, State, and local agencies, the Conference of Radiation Control Program Directors, and the Organization of Agreement States, and after public notice and an opportunity for comment, shall evaluate, and provide recommendations relating to, the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device.*

(B) *Not later than 1 year after the date of enactment of this section, and not less than once every 4 years thereafter, the task force shall submit to Congress and the President a report, in unclassified form with a classified annex if necessary, providing recommendations, including recommendations for appropriate regulatory and legislative changes, for—*

(i) *a list of additional radiation sources that should be required to be secured under this Act, based on the potential attractiveness of the sources to terrorists and the extent of the threat to public health and safety of the sources, taking into consideration—*

(I) radiation source radioactivity levels;

(II) radioactive half-life of a radiation source;

(III) dispersability;

(IV) chemical and material form;

(V) for radioactive materials with a medical use, the availability of the sources to physicians and patients for medical treatment; and

(VI) any other factor that the Chairperson of the Commission determines to be appropriate;

(ii) *the establishment of, or modifications to, a national system for recovery of lost or stolen radiation sources;*

(iii) *the storage of radiation sources that are not used in a safe and secure manner as of the date on which the report is submitted;*

(iv) *modifications to the national tracking system for radiation sources;*

(v) *the establishment of, or modifications to, a national system (including user fees and other methods) to provide for the proper disposal of radiation sources secured under this Act;*

(vi) *modifications to export controls on radiation sources to ensure that foreign recipients of radiation sources are able and willing to adequately control radiation sources from the United States;*

(vii)(I) *any alternative technologies available as of the date on which the report is submitted that may perform some or all of the functions performed by devices or processes that employ radiation sources; and*

(II) the establishment of appropriate regulations and incentives for the replacement of the devices and processes described in subclause (I)—

(aa) with alternative technologies in order to reduce the number of radiation sources in the United States; or

(bb) with radiation sources that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source; and

(viii) the creation of, or modifications to, procedures for improving the security of use, transportation, and storage of radiation sources, including—

(I) periodic audits or inspections by the Commission to ensure that radiation sources are properly secured and can be fully accounted for;

(II) evaluation of the security measures by the Commission;

(III) increased fines for violations of Commission regulations relating to security and safety measures applicable to licensees that possess radiation sources;

(IV) criminal and security background checks for certain individuals with access to radiation sources (including individuals involved with transporting radiation sources);

(V) requirements for effective and timely exchanges of information relating to the results of criminal and security background checks between the Commission and any State with which the Commission has entered into an agreement under section 274 b.;

(VI) assurances of the physical security of facilities that contain radiation sources (including facilities used to temporarily store radiation sources being transported); and

(VII) the screening of shipments to facilities that the Commission determines to be particularly at risk for sabotage of radiation sources to ensure that the shipments do not contain explosives.

g. ACTION BY COMMISSION.—Not later than 60 days after the date of receipt by Congress and the President of a report under subsection f.(3)(B), the Commission, in accordance with the recommendations of the task force, shall—

(1) take any action the Commission determines to be appropriate, including revising the system of the Commission for licensing radiation sources; and

(2) ensure that States that have entered into agreements with the Commission under section 274 b. take similar action in a timely manner.

* * * * *

[SEC. 229, TRESPASS UPON COMMISSION INSTALLATIONS.—]

SEC. 229. TRESPASS ON COMMISSION INSTALLATIONS.

[a. The]

a.(1) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon

any facility, installation, or real property subject to the jurisdiction, administration, [or in the custody] *in the custody* of the Commission, or *subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.* [Every]

(2) *Every* such regulation of the Commission shall be posted conspicuously at the location involved.

b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

* * * * *

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who [intentionally and willfully] *knowingly* destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste [storage facility] *treatment, storage, or disposal facility* licensed under this Act;

(3) any nuclear fuel for [such a utilization facility] *a utilization facility licensed under this Act*, or any spent nuclear fuel from such a facility; [or]

(4) any uranium enrichment [facility licensed] , *uranium conversion, or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission[,]* ;

(5) *any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;*

(6) *any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or*

(7) *any radioactive material or other property subject to regulation by the Commission that, before the date of the offense, the Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;*

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

b. Any person who [intentionally and willfully] *knowingly* causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or con-

spires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

* * * * *

SEC. 274. COOPERATION WITH STATES.—

a. * * *

* * * * *

b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

- [(1) byproduct materials as defined in section 11 e. (1);
- [(2) byproduct materials as defined in section 11 e. (2);
- [(3) source materials;
- [(4) special nuclear materials in quantities not sufficient to form a critical mass.]] *State:*
 - (1) *Byproduct materials (as defined in section 11 e.).*
 - (2) *Source materials.*
 - (3) *Special nuclear materials in quantities not sufficient to form a critical mass.*

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

* * * * *

ENERGY REORGANIZATION ACT OF 1974

An Act to reorganize and consolidate certain functions of the Federal Government in a new Energy Research and Development Administration and in a new Nuclear Regulatory Commission in order to promote more efficient management of such functions.

SHORT TITLE

SECTION 1. This Act may be cited as the “Energy Reorganization Act of 1974”.

* * * * *

SEC. 211. (a)(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

* * * * *

- (2) For purposes of this section, the term “employer” includes—
 - (A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant; [and]

(D) a contractor or subcontractor of the Department of Energy [that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344.] or the Commission; and

(E) the Commission.

(b)(1) * * *

* * * * *

(4) *DE NOVO JUDICIAL DETERMINATION.*—A claimant may bring a civil action in any United States district court for a de novo determination of a claim under paragraph (1) if the Secretary does not—

(A) issue a final decision relating to the claim within 1 year after the date on which a complaint is filed; and

(B) establish that a delay described in subparagraph (A) is caused by bad faith of the claimant.

* * * * *

SEC. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE.

(a) *ESTABLISHMENT.*—There is established in the Commission an Office of Nuclear Security and Incident Response (referred to in this section as the ‘Office’).

(b) *DIRECTOR.*—

(1) *IN GENERAL.*—The Office shall be headed by a Director of Nuclear Security and Incident Response (referred to in this section as the ‘Director’).

(2) *APPOINTMENT.*—The Director shall be appointed by the Commission.

(3) *DUTIES.*—The Director shall—

(A) report to the Commission in accordance with section 209; and

(B) perform such actions as the Commission may delegate to the Director.

(4) *TERMS OF SERVICE.*—The Director shall serve at the pleasure of, and be removable by, the Commission.

* * * * *

LOW-LEVEL RADIOACTIVE WASTE POLICY ACT

An Act to set forth a Federal policy for the disposal of low-level radioactive wastes, and for other purposes

* * * * *

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) * * *

* * * * *

(9) LOW-LEVEL RADIOACTIVE WASTE.—**【The term】**

(A) *IN GENERAL.*—*The term “low-level radioactive waste” means radioactive material that—*

【(A)】 *(i) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))); and*

【(B)】 *(ii) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.*

(B) *EXCLUSION.*—*The term ‘low-level radioactive waste’ does not include byproduct material (as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)).*

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REORGANIZATION PLAN NO. 1 OF 1980

* * * * *

NUCLEAR REGULATORY COMMISSION

SEC. 1. (a) * * *

* * * * *

(b)(1) * * *

* * * * *

(2) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman, after consultation with the Executive Director for Operations, shall initiate the appointment, subject to the approval of the Commission, and the Chairman, or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Director of Nuclear Reactor Regulation,

(ii) Director of Nuclear Material Safety and Safeguards,

(iii) Director of Nuclear Regulatory Research,

(iv) *Director of Nuclear Security and Incident Response;*

【(iv)】 (v) Director of Inspection and Enforcement,

【(v)】 (vi) Director of Standards Development.

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